

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SEVENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 1646 of 2005

Between:

The Primary Agricultural Cooperative Society, Ippaguda,

Warangal District, represented by its Person-in-Charge/Chairman

B. Satyanarayana

..... PETITIONER

AND

1. The Appellate Authority under Section, 48(1) of A.P Shops &

Establishment Act, 1988 & the Asst. Commissioner of Labour,

Warangal - I, Warangal District

2. Sri Ch. Somaiah, S/o. Mallaiah, C/o Sri S. Sanjeeva Rao,

Advocate, Hanumakonda, Warangal District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to call for the records from the 1st Respondent herein and issue a Writ, Order or Direction more particularly one in the nature of *Writ of Certiorari* quashing the orders dated 26-02-2001 passed in S.E. No. 4/1997 of the 1st Respondent directing the petitioner society to re-instate the 2nd Respondent herein into his service with continuity of service with full back wages from the date of his termination within 20 days from the date of receipt of the said order as illegal, perverse, arbitrary, contrary to law, in violation of principles of Natural Justice and in violation of Articles 14 and 21 of the Constitution of India and to pass such other order or orders as this Honourable Court may deem fit and proper in the circumstances of the case

Counsel for the Petitioner: MR.P.SRIDHAR RAO

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for the Respondent No.2: V. NARASIMHA GOUD

The Court made the following:

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ORDER:

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This writ petition was filed for quashing the orders dated 26.02.2001 passed in S.E. No.4 of 1997 of the first respondent directing the petitioner society to reinstate the 2nd respondent herein into service with continuity of service with full back wages from the date of his termination within 20 days from the date of receipt of the said order as illegal, perverse, arbitrary and contrary to law.

2. The brief facts of the case that are necessary for disposal of the writ petition may be stated as follows:

The 2nd respondent has filed S.E.No.4 of 1997 before the first respondent alleging that he was working as Attender and his services were terminated w.e.f., 16.09.1997 without assigning any reasons and without any notice and that the petitioner society was not paying the minimum wages as fixed by the Government. It appears that the first respondent passed an order dated 07.03.1998 against the petitioner by directing him to reinstate the 2nd respondent with all benefits. In the said case, the petitioner society did not receive any notice. On receipt of the said *exparte* orders in the year 1998 itself, the petitioner society has filed an application before the first respondent to set-aside the *exparte* orders dated 7.3.1998 in S.E.No.4 of 1997. The first respondent has taken up the case for further hearing by setting aside the *exparte* orders dated 7.3.1998 and passed the impugned order. It is stated that the first respondent without going into merits of the matter, on the basis of the contention raised in the counter-affidavit and the evidence adduced before it, allowed the claim of the second respondent. Therefore, the reasons given in granting the relief to the second respondent is totally perverse and untenable in

law. Hence, the present writ petition.

3. In the counter affidavit filed by the second respondent, it is stated that against the impugned order of the first respondent, an appeal lies before the 2nd appellate authority under Section 48 (3) of A.P. Shops and Establishment Act, i.e., Deputy Commissioner of Labour, Warangal. But, suppressing the same, the petitioner approached this Honourable Court and filed the present writ petition. Therefore, the writ petition is not maintainable and after lapse of four years, the petitioner approached this Court, and hence, he prays to dismiss the writ petition by vacating the stay.

4. The learned counsel appearing for the petitioner contended that the appellant himself stepped into service and the petitioner never terminated the service of the appellant and that the second respondent aged about 70 years. He further contended that though the appeal lies before the Deputy Commissioner, the same has to be filed within 30 days. Since no appeal has been filed, the petitioner filed this writ petition challenging the same and hence, he prays to allow the writ petition.

5. The learned Government Pleader for Labour appearing on behalf of the first respondent contended that an effective alternative remedy is available to the petitioner in filing an appeal before the Deputy Commissioner under Section 48 (3) of A.P. Shops and Establishment Act (for short the A.P.S.E. Act), and therefore, the writ petition is not maintainable.

6. The learned counsel appearing for the 2nd respondent has also contended that an effective alternative remedy is available to the petitioner challenging the orders of the first respondent, and hence, he prays to dismiss the writ petition.

7. There cannot be any dispute that there is no bar for entertaining the writ petition in exercise of jurisdiction under Article 226 of Constitution of India.

Simply because there is an alternative remedy available to the parties, the said exercise of power cannot be exercised under these circumstances. It is not a specific case that the fundamental right of the petitioner has been infringed or violated and also, it is not a specific case of the petitioner that the authority, who passed the impugned order lacks jurisdiction. So also, it is not a specific case that where the principles of natural justice have been violated inasmuch as the right to adduce any evidence was not denied by the first respondent to the petitioner society at the time of trial in S.E.No.4 of 1997.

8. Section 48 (3) of the A.P. Shops and Establishment Act, 1988, reads thus:

“Against any decision of the authority under sub. Section (2), a second appeal shall lie to such authority as may be notified by the Government within 30 days from the date of communication of the decision and the decision of such authority on such appeal shall be final and binding on both the employer and employee and shall be given effect to within such time as may be specified in the order of that authority”.

9. It is not in dispute that the Deputy Commissioner is the second appellate authority against the orders passed by the first respondent-appellate authority. Therefore, an appeal shall lie before the Deputy Commissioner. Hence, the petitioner has got an alternative and efficacious remedy to challenge the order passed by the first respondent before the second appellate authority.

10. Accordingly, the writ petition is dismissed with a direction to the petitioner to approach the competent authority against the orders passed by the first respondent, under the provisions of A.P. Shops and Establishment Act. All the contentions raised in this writ petition are left over. No order as to costs.

(K.C. BHANU, J)

Date: 07.06.2005.

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ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Appellate Authority under Section, 48(1) of A.P Shops & Establishment Act, 1988 & the Asst. Commissioner of Labour, Warangal - I, Warangal District.
2. 2 CCs to G.P. for Labour, High Court Buildings, High Court of A.P., Hyderabad.
4. 2 CD copies

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